

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 16 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KIRANKUMAR BHOGILAL PANDYA

Versus

RAMCHANDRA NARANBHAI PATEL

Appearance:

MR PRADEEP PATEL for appellant

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/02/2000

ORAL JUDGEMENT

1. This is defendant's Appeal against the judgment and decree dt.4.12.99 passed by Civil Judge (S.D.), Anand in Special Civil Suit No.46/94 whereby the suit was decreed in favour of the plaintiff for a sum of Rs.56,000/- with running interest at the rate of 12% per

annum from the date of filing of the Suit till the date of actual realisation and also the costs of the Suit.

2. The plaintiff and the defendant were serving in Amul Dairy. The defendant took upon himself to run some agency in the name and style of Janta Bachat Group and to receive deposits from the public at large in the name of the said Janta Bachat Group. The plaintiff deposited an amount of Rs.50,000/- and the defendant had issued a receipt for the same. The deposit was made on 15.3.85 for a period of one year and it was stipulated that this deposit will remain in force till 15.3.86 coupled with the condition that the plaintiff will not be entitled to receive the money back or demand the same on or before 15.3.86. It is the case of the plaintiff that when he found himself to be in need of money, he asked the defendant to return the same on 1.3.92 but the defendant did not return the same and later on issued a post dated cheque dt.10.10.92 drawn upon the Kaira District Central Co-operative Bank Ltd., Amul Dairy Branch from his Account No.917 for Rs.50,000/- as he was not having cash at that time. It is also the case of the plaintiff that he promised that the cheque will be cleared but upon presentation of the same, it was not honoured as the payment was stopped by the defendant. Plaintiff therefore served the defendant with a notice, the defendant yet failed to pay the amount of Rs.50,000/- along with interest and, therefore, the present suit was filed by the plaintiff on 6.5.94.

3. The defendant through written statement Exh.24 denied the liability to pay the suit amount and sought to traverse the claim of the plaintiff on the ground that the suit cheque was got written in Police Station forcibly under threat and coercion and, therefore, the defendant had instructed his Banker and got the payment stopped. The defendant has also come with the case that the plaintiff had got written a writing on a stamp paper of Rs.10/- and a cheque No.0627159 for Rs.50,000/- mentioned in the suit, from the defendant in Anand Rural Police Station on 8.4.92 forcibly and hence the defendant had issued a Registered notice on 29.4.92 through his advocate stating therein that the writing and the cheque were illegal and void and had asked the plaintiff to return the same. It has been submitted by Mr. Patel that the plaintiff had refused to accept this notice.

4. On the basis of the pleadings, as aforesaid, the issues as under were struck by the trial court.

"(1) Whether the plaintiff proves the suit claim?

- (2) Whether the plaintiff is entitled to get interest? If yes, at what rate?
- (3) What is found due to the plaintiff?
- (4) Whether the defendant proves the contents of para 8 of his written statement Exh.24?
- (4A) Whether the suit is barred by the period of limitation?
- (4B) Whether the suit is bad for want of necessary parties to the suit?
- (5) What order and decree?"

5. The plaintiff examined himself at Exh.39 and produced documentary evidence Exh.40 to Exh.47, 52, 75 and 76. The defendant examined himself at Exh.60 and produced the documentary evidence at Exhs.61 to 63. The trial court after considering the evidence and material placed on record, held that the plaintiff had proved his suit claim, that the plaintiff was entitled to get the interest at the rate of 12% per annum, that the plaintiff was entitled to get a sum of Rs.56,000/- on the date of the filing of the suit from the defendant. Rest of the issues Nos.4A with regard to limitation and 4B with regard to non joinder of necessary parties were decided against the defendant and order and decree were passed accordingly.

6. While assailing the aforesaid judgment and decree before this court, learned counsel for the appellant Mr. Patel has urged only two points. Firstly he has submitted that the suit was time barred because the deposit was for a period of one year upto 15.3.86 whereas the Suit was filed on 6.5.94 i.e. much after the expiry of the period of 3 years from 15.3.86. The correct position is that plaintiff could not demand prior to 15.3.86 - but he could make a demand at any time after 15.3.86 and the cause of action would arise on refusal to return the money on demand. He has made reference to Article 22 of the Limitation Act and has submitted that the period of limitation commenced from 15.3.86. I have considered this argument raised by Mr. Patel. I find that the receipt Exh.40 shows that the plaintiff was not entitled to get back the money at any time prior to 15.3.86. The money was deposited with the defendant so as to be demanded any time after 15.3.86. There is no dispute between the parties that this money was demanded by the plaintiff on 1.3.92 and when such demand was not agreed to and later on post dated cheque dt.10.10.92 was dishonoured under his instructions to the Banker and thereupon the present suit was filed on 6.5.94. In such circumstances according to Article 22, if the period of limitation is three years, the question is as to on what

point of time the period of limitation would commence and answer is found to the effect that it would commence from the date when the demand is refused. The demand has been made in the year 1992 and, therefore, the suit, as was filed on 6.5.94, before the expiry of three years period i.e. 28.2.95, cannot be said to be time barred. In this regard, learned counsel for the appellant has raised ancillary argument that the plaintiff has admitted in his cross-examination before the trial court that he had approached the defendant for renewal of the period as was mentioned in Exh.40 i.e. after 15.3.86 but the defendant did not agree for renewal. That may be so, but that was only with regard to the extension of the period beyond 15.3.86 and that may or may not be agreed and if at all it was to be agreed, it could be agreed only with bilateral consent. But the mere fact that the plaintiff had approached for renewal of the period would not have any impact on the question of limitation, when it is proved before the trial court by positive evidence that the demand was made on 1.3.92 and a post dated cheque was issued on 10.10.92, the payment of which was got stopped by defendant himself by giving instruction to his Banker. This ground that the suit was barred by time, therefore, fails.

7. The second ground on which the judgment and decree has been sought to be challenged before this court is that the post dated cheque dt.10.10.92 was given by defendant under threat and coercion by the Police and the notice was sent by defendant immediately thereafter to the plaintiff that such cheque was given only under threat and the same may be returned but this notice was not accepted and refused by the plaintiff and, therefore, the said cheque could not form the basis either for the purpose of claiming the suit to be within limitation or for the purpose of the amount sought to be recovered through the suit. This submission, in the opinion of this court, is not at all relevant for the purpose of examining the validity and correctness of the impugned judgment and decree. The defendant had failed to prove before the trial court that the cheque was issued under any threat or coercion of the police and that issue No.4 has been decided against the defendant. The trial court has recorded the reasons in this regard in para 17 of the Judgment. Merely because a criminal complaint had been filed by the plaintiff, it cannot be said that the cheque was issued under any threat or coercion. No member of the Police staff of the concerned Police Station has been examined. It further appears that no compromise was written in the police station nor any cheque was handed over to the plaintiff at the time of the writing of the

so called compromise, the copy of which has been produced at Exh.51 and in this document i.e. the so called compromise there are no numbers of the cheque and name of the Bank. In fact, finding of the trial court is that the cheque was handed over to the plaintiff at the residence of the defendant. Thus, the second ground of challenge to the impugned judgment and decree also fails.

8. The learned counsel for the appellant has also argued that the suit was bad for non joinder of parties and according to him, the other persons, who were partners of the so called Janta Bachat Group, should also have been impleaded as parties. I called upon the learned counsel for the appellant to point out as to whether it was a registered partnership Firm or was it any authorised agency for the purpose of collecting money from the public at large. The learned counsel for the appellant has submitted that he is not in a position to say whether it is a registered partnership firm or as to whether it had any authorisation by the concerned Government functionaries so as to collect the money from the members of the public at large. However, this Court find from the judgment of the trial court para 29 with regard to issue No.4B that the defendant himself had admitted in his cross examination that 'Janta Bachat Group' was not registered under any law nor it has any Constitution, rules or bye-laws. There were 100 members in the said Group and yet there was no Chairman or President of the said Group. The defendant had admitted that he was doing the work of collecting money from the members and advancing the same to the people in need and not only to its members. Thus, total control over the money collected was with the defendant and defendant alone. The existence of so called Committee was not proved and it was a scheme pioneered, piloted, possessed and controlled exclusive by the defendant. Merely because it was run in the name of 'Janta Bachat Group', it would not give any legal status nor it would make such a Group as an legal entity and, therefore, the objection with regard to the non joinder of the other members of the Group is wholly misconceived, rather ill conceived. The trial court has also recorded that no Audit Report or audited accounts have been proved to show that said Saving Scheme was running on co-operative basis. In the opinion of this Court such transactions perpetuate fraud on the public at large and such Agencies are engaged in the business of money laundering and the prosecutors and promoters of such Scheme simply deserve to be dealt with heavy hands according to the relevant law by the concerned functionaries of the State. I also called upon Mr. Patel to show as to whether the defendant had any

permission from his employer i.e. Amul Dairy to enter into such business, but he candidly submitted that he is not in a position to say that any such permission had been obtained from his employer i.e. Amul Dairy or not. This Court fails to understand how the pioneers, who innovate such fraudulent Agencies for the purpose of money laundering, can escape the notice of the State Administration and continue such business even when the fact had become known at least to the functionaries of the State i.e. Rural Police Station when the criminal complaint was filed. Such unauthorised Agencies, if are allowed to continue to do such business, they will be injurious to the interest of the society as such and would certainly militate against settled principles of State economy and, therefore, it is for the State functionaries to take care that such Agencies are not allowed to plunder the money from the members of the public at large and it is the duty of the State to protect the members of the public from being exploited at the hands of such unauthorised Agencies, who are simply engaged in the business of money laundering and to make use of such money for purposes, which cannot be said to be permissible or authorised under the law. There is no substance in this Appeal. The same is hereby dismissed.

A copy of this order may be send to the Head of the Amul Dairy at Anand and the District Collector, Anand so as to investigate whether any such Agencies are still operating and for such appropriate action in accordance with law as they deem fit and proper in the light of the result of such investigation.